

Testimony on AB424 To Assembly Committee on Criminal Justice Shel Gross, Director of Public Policy Mental Health America of Wisconsin

I appreciate the opportunity to testify for informational purposes to the committee regarding AB424, which would conform Wisconsin law to the National Instant Criminal Background Check System (NICS).

Mental health consumers and advocates are always concerned about policies or laws that appear to link violence or dangerousness with mental illness as this can reinforce inaccurate stereotypes of people with mental illnesses. Most people with mental illnesses are not violent or a danger to others and, in fact, mental illness alone does not appear to convey a risk of violence above that of the general population. Nonetheless, we recognize that some individuals, at some points in their illness, may be found to be a danger and we further recognize that the state has a responsibility to comply with federal law in this area. It is important, therefore, that the state's response meets the requirements of the federal law but does not exceed what is required in ways that might contribute to stigma or discourage people who may need and want treatment from seeking such treatment.

To this end I have identified three issues that I think would be important for this legislation to address. I have worked with Sen. Darling's office on this and would like to express my appreciation for her willingness to address these issues. The issues are:

- 1. Ensuring only the minimal amount of required information is provided to the NICS database. Specifically, it is my understanding that the NICS requires only identifying information about who is not eligible to purchase weapons but does not need to include information that the individual is restricted because of a mental illness. My understanding is that while the Department of Justice (DOJ) will have information identifying that a particular individual is restricted from purchasing a handgun due to a finding of mental illness and dangerousness this information will not be communicated to NICS.
- 2. Ensuring that the database would not be used for purposes other than reporting to the handgun registry to protect potential violations of confidentiality. My understanding is that this particular information is used only for purposes of reporting to NICS and will not be available for other purposes.
- 3. A person's name is removed once they are found to no longer present a danger to others. My understanding is that federal law allows for this but that an amendment to clarify this in the current bill would be useful. The bill does direct the courts to inform DOJ when the court has determined that the person is no longer under commitment and a danger to him or herself or others.

Thank you.

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Senator Darling Testimony on AB 424
Before the Assembly Committee on Criminal Justice
January 30, 2008

Thank you Chairman Kleefisch and committee members for hearing this important legislation.

AB 424 (and companion bill SB 216) would require handgun background checks to access mental health information that would prohibit a handgun purchase under current federal law. This bill simply requires the Wisconsin Circuit Court Access Consolidated Court Automation Programs (CCAP) to provide the necessary information to the Wisconsin Department of Justice (DOJ), which in turn provides the information to the National Instant Criminal Background Check System (NICS).

This provision strengthens background checks for handgun purchases by closing a loophole that has existed for years under our previous Attorneys General. A federal law exists that prohibits people with an involuntary mental health commitment from possessing firearms, yet Wisconsin does not make that information available when background checks for handgun purchases are performed.

With the April 16, 2007 tragedy at Virginia Tech, where 32 innocent and unarmed citizens were murdered, this issue is given renewed importance. Had mental health commitment information been available on the background check, the shooter would likely have been prohibited under federal law from purchasing firearms. Currently only 23 states submit any information to the NICS system. Wisconsin is not one of them. We must make sure prohibited-purchasers like Seung-Hui Cho can't buy a handgun in Wisconsin because of a loophole that should have been fixed years ago.

- This bill will keep people who are prohibited for mental health reasons under state and federal law from buying handguns.
- This bill makes information required under current federal law available on a NICS handgun background check.
- This bill does not create any new prohibitions for gun purchases; rather, it simply <u>makes</u> information available to DOJ and NICS that is required under law.

On January 8, 2008, President Bush signed into law the NICS Improvement Act (HR 2640), a law that provides \$250 million annually to states that implement laws such as SB 216. This bipartisan bill, supported by the NRA, guides participating states how to provide relevant and accurate records to the FBI. The new law takes a carrot-and-stick approach to get states to report people who are ineligible to buy guns. It authorizes up to \$250 million a year for five years to states to help pay the cost of providing the records, and threatens to withhold federal anti-crime funds if the states fail to act.

Capitol Office:

District Office:

After the Virginia Tech massacre, The US Department of Justice wrote an open letter to every state's Attorney General on May 9, 2007 identifying what steps should be taken to ensure states compliance with federal law. The letter from the US DOJ is clear in its directive to the states. "ATF and our FBI partners who operate the NICS system are encouraging State authorities to take the necessary actions to ensure that all disqualifying information is provided to prevent the purchase of firearms by those prohibited from possessing firearms under Federal law."

SB 216 has the support of the Wisconsin Chiefs of Police Association, the Nation Rifle Association, the Milwaukee Police Association, and the University of Wisconsin Police Chief.

We have worked closely with the Department of Justice to alleviate several concerns posed to us by the Mental Health America of Wisconsin:

- 1. Minimal information is transmitted to NICS from DOJ, and none that identifies a prohibited purchaser as an adjudicated mental defective. This was a concern of the MHA and the bill, as written, ensures this.
- 2. Information about those adjudicated as a mental defective is not used for anything other than for background check purposes under this law. No other person can access or transmit this information for any other reason. Our bill, as written, ensures this.
- 3. We have an amendment making clear that DOJ shall convey information to NICS regarding the cancellation of any such prohibition order against a person. This allows a person's name to be removed once they no longer present a danger. Federal law already guarantees this process will happen, but writing it into statute will doubly ensure it.

Another frequently asked question refers to the privacy issue of the records being released. It is true that current law prevents the Department of Justice from sharing mental health information because such records are confidential under the Mental Health Act. There are exceptions to this Act, and our bill creates another exception to allow the courts to communicate that information to DOJ.

We clearly have the need for this bill, and now we have the funding from the Federal government. It's time for Wisconsin to get this done. Thank you for your time today.